



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 39 of 2009

KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF

VERSUS

AGIL MAHAMOUD SALIM.....1ST DEFENDANT

ACADEMY PROPERTIES LIMITED.....2ND DEFENDANT

WILSON GACANJA.....3RD

DEFENDANT

RULING

This is an application by the 2nd defendant for an order that the time for filing of the defence do run from the date of supply upon it of particulars already sought. In the alternative the 2nd defendant (hereinafter “the applicant”) seeks an order that the time for filing of the defence be limited to such number of days as the court may deem expectant from the date of supply of the particulars. The application is expressed to be brought under the provisions of Order VI Rule 8 (4) of the Civil Procedure Rules.

The reason for the application is that the plaint as drawn is not explicit enough to enable the applicant adequately plead to the allegations therein and it is therefore necessary that the applicant be supplied with particulars as requested. The application is supported by an affidavit sworn by one, Abdalla Salim Al Maery, a director of the applicant. The affidavit elaborates the said ground and exhibits the Request for Particulars.

The application is opposed on the basis of Grounds of Opposition filed by counsel for the plaintiff. In the said grounds the plaintiff states that its plaint, chamber summons dated 13th February 2009 and supporting affidavit sworn on the same date contain sufficient particulars to enable the applicant adequately respond to them. The plaintiff further states that it will rely entirely on public documents to prove its claim against the applicant and that the matters avered in the plaint are not exclusively in its knowledge.

Having heard the oral submissions made on behalf of the applicant and the plaintiff, I take the following view of the matter. **The Supreme Court Practice (White Book) 1991 pages 299 and 300 paragraph 18/12/2** which deals with the function of particulars reads as follows:

“In every pleading a certain amount of detail is necessary to ensure clearness and to prevent surprise at the trial. Each party must state his case with precision otherwise his opponent will not know for certain what is the real point in dispute therefore will not properly prepare his evidence for trial.

It is absolutely essential that the pleading not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they will have to meet when the case comes up for trial. They should sufficiently indicate to the opponent the nature of the evidence required by him.”

I have perused the plaint, the Chamber Summons and the affidavit in support of the Chamber summons. The plaintiff has pleaded its case in such detail that it is rather surprising that the applicant finds the plaintiff's allegations inadequate to enable it plead to the same. The function of particulars is to ensure clearness and prevent surprise at the trial. The plaintiff in its plaint and Chamber Summons has in my view stated sufficient facts which adequately put the applicant on its guard and tells it what it will have to meet when the case comes up for trial. The plaintiff has sufficiently indicated to the applicant the nature of the evidence required by it. In any event the plaintiff has been categorical that it will rely entirely on public documents to prove its claim and has no further particulars that are exclusively in its knowledge.

In the premises, I find and hold that an order to furnish particulars is not necessary or desirable at this stage to enable the applicant to plead to the plaintiff's claim. The application dated 5th March 2009 is without merit and is dismissed with costs.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 27TH DAY OF APRIL 2009.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mr. Buti for the 2nd defendant/applicant.

F. AZANGALALA

JUDGE

27TH APRIL 2009